

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KIM VASQUEZ,

Plaintiff,

-against-

JOHN DOE(S), ORANGETOWN POLICE  
OFFICERS,

Defendants.

20-CV-5851 (CS)

ORDER OF SERVICE

CATHY SEIBEL, United States District Judge:

Plaintiff, currently held in the Rockland County Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that defendants subjected him to excessive force and provided him with inadequate medical care. By order dated October 1, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* ("IFP").<sup>1</sup>

**DISCUSSION**

**A. Addition of Rockland County Sheriff Louis Falco III**

Under Rule 21 of the Federal Rules of Civil Procedure, the Court, on its own motion, "may at any time, on just terms, add or drop a party." Fed. R. Civ. P. 21; *see Anwar v. Fairfield Greenwich, Ltd.*, 118 F. Supp. 3d 591, 618-19 (S.D.N.Y. 2015) (Rule 21 "afford[s] courts discretion to shape litigation in the interests of efficiency and justice.").

Plaintiff seeks an injunction "to ensure that all [his] medical needs are provided for" and that "the metal tazer [sic] is removed from his body," and that he is able to recover "infection

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<sup>1</sup> Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP *See* 28 U.S.C. § 1915(b)(1). In granting Plaintiff's IFP application, the Court noted that Plaintiff has been recognized as barred from proceeding IFP under the Prison Litigation Reform Act's "three-strikes" rule, but determined that the complaint sets forth allegations that Plaintiff was in imminent danger of serious physical harm at the time he filed the complaint, and therefore meets the exception to the rule. *See* 28 U.S.C. § 1915(g).

free.” (ECF No. 1, at 5.) But Plaintiff only names John Doe defendants, all of whom he describes as Orangetown Police Officers. Because Plaintiff is in the custody of the Rockland County Correctional Facility, which is overseen by the Rockland County Sheriff’s Department, the Orangetown Police Officers he seeks to sue cannot provide him with the injunctive relief he seeks. The Court therefore construes the complaint as asserting claims against Rockland County Sheriff Louis Falco III, and directs the Clerk of Court to amend the caption of this action to add as a defendant Rockland County Sheriff Louis Falco III. *See* Fed. R. Civ. P. 21. This amendment is without prejudice to any defenses Falco may wish to assert.

**B. Service on Sheriff Falco**

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service

automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendant Rockland County Sheriff Louis Falco III through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for this defendant. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon this defendant.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

**C. John Doe Defendants**

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). The Court would normally direct the Town of Orangetown to assist Plaintiff identifying the John Doe defendants he seeks to sue. But by letter received on September 29, 2020, Plaintiff states that he now knows the identities of the Orangetown Police Officers, and seeks leave to file an amended complaint to name them as defendants.

The Court therefore grants Plaintiff thirty days’ leave to an amended complaint naming the John Doe defendants. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named John Doe Defendants and deliver all documents necessary to effect service to the U.S. Marshals Service.

**CONCLUSION**

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is further directed to amend the caption of this action to add as a defendant Rockland County Sheriff Louis Falco III. *See* Fed. R. Civ. P. 21.

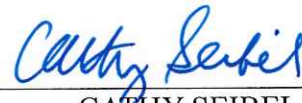
The Clerk of Court is further instructed to complete the USM-285 form with the address for Rockland County Sheriff Louis Falco III and deliver to the U.S. Marshals Service all documents necessary to effect service on this defendant.

The Court grants Plaintiff thirty days' leave to file an amended complaint that names the John Doe defendants.

An "Amended Complaint" form is attached to this order.

SO ORDERED.

Dated: 10/1/20  
White Plains, New York



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CATHY SEIBEL  
United States District Judge

**DEFENDANT AND SERVICE ADDRESS**

Rockland County Sheriff Louis Falco III  
55 New Hempstead Road  
New City, NY 10956

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Write the full name of each plaintiff.

-against-

\_\_\_\_ CV \_\_\_\_\_

(Include case number if one has been assigned)

**AMENDED  
COMPLAINT**  
(Prisoner)

Do you want a jury trial?

☐ Yes ☐ No

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Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

**I. LEGAL BASIS FOR CLAIM**

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "*Bivens*" action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: \_\_\_\_\_

**II. PLAINTIFF INFORMATION**

Each plaintiff must provide the following information. Attach additional pages if necessary.

\_\_\_\_\_  
First Name

\_\_\_\_\_  
Middle Initial

\_\_\_\_\_  
Last Name

\_\_\_\_\_  
State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

\_\_\_\_\_  
Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

\_\_\_\_\_  
Current Place of Detention

\_\_\_\_\_  
Institutional Address

\_\_\_\_\_  
County, City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

**III. PRISONER STATUS**

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: \_\_\_\_\_

**IV. DEFENDANT INFORMATION**

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code





**INJURIES:**

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

**VI. RELIEF**

State briefly what money damages or other relief you want the court to order.

**VII. PLAINTIFF'S CERTIFICATION AND WARNINGS**

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated _____		Plaintiff's Signature _____	
First Name _____	Middle Initial _____	Last Name _____	
Prison Address _____			
County, City _____	State _____	Zip Code _____	

Date on which I am delivering this complaint to prison authorities for mailing: \_\_\_\_\_